

Kern County Develops No-Smoking Policy in Jails

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On January 15, 1989, the Kern County Sheriff's Department announced that smoking by inmates and staff in the jails would be banned. February 12 marked the date that sales of cigarettes were discontinued in the secure facilities of the Kern County jail system. By February 26, after a two-week grace period, cigarettes had become a contraband item in the jails.

The no-smoking policy adopted by the Department is now firmly in place and accepted by both inmates and staff. No significant incidents have been reported to date.

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The no-smoking policy developed by the Kern County Sheriff's Department was born in July 1988, when supervisory staff working in the jails presented a proposal to ban

cigarette smoking within the confines of the detention facilities.

The no-smoking policy was predicated on reports by the U.S. Surgeon General and the National Academy of Sciences. Both studies concluded that "involuntary smoking" is a cause of disease, including lung cancer, in healthy non-smokers.

The Surgeon General's report also emphasized that "protection of individuals from exposure to environmental tobacco smoke is therefore a responsibility shared by all. . . . As employers and employees we must ensure that the act of smoking does not expose nonsmokers to tobacco smoke."

Cigarette smoking, which is responsible for more than 300,000 premature deaths per year, is the

major preventable cause of death and disability in the United States.

However, those who choose to smoke were not the focus of concern in developing the policy. Its focus was those who prefer a healthy environment and

choose not to smoke, but who are subjected to involuntary smoking.

The unique nature of jails opened up a host of other considerations related to the smoking issue. Among other reasons for banning smoking were:

- **Safety and Security** - Fire has long been known to present a real possibility for disaster in jails. Widespread use of matches increases the risk of fire caused either accidentally or intentionally. Providing inmates with matches also gives them the potential for creating explosives or incendiary devices.
- **Maintenance** - Building maintenance was also an important factor in the decision to implement the policy. Smoking in the enclosed jail environment requires air filters to be changed frequently and causes added wear and tear on air conditioning systems, especially in institutions with recirculating air systems. Smoking in the jails also creates residue on the walls, ceiling, floors, furniture, and mechanical devices, causing paint to deteriorate more rapidly than otherwise and mechanical devices to require more frequent maintenance.

Legal Questions

Along with identifying the reasons for developing a no smoking policy, staff also explored other potential effects of the proposed policy. Among those was the legality of banning smoking in the jail.

There is very little definitive caselaw relative to smokers' or non-smokers' rights, especially cases involving jail litigation. In 1976, a New Jersey Superior Court ruled that an employee who was highly sensitive

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to tobacco smoke had the right to a smoke-free workplace. The decision stated that, under the common law of the land, it is the employer's responsibility to provide a safe and healthy environment, free of recognized hazards.

Staff of the Kern County Sheriff's Department were unable to find anything in state law or court decisions indicating a right for inmates to smoke while incarcerated or for employees to smoke in the work place. The courts have not supported anyone's right to impose a health risk on others.

To expand our view on this matter, we contacted a respected advocate of prisoners' rights. Requesting to

remain off the record, this attorney contends that smoking is not a constitutionally-guaranteed right. Also, since prohibiting smoking is beneficial to most of those who are housed and work in the jail, his organization probably would be reluctant to defend smoking.

Medical Issues

In addition to the legal question, staff were curious about the medical implications of a ban on smoking. To find an answer, we turned to

Dr. Forrest Tennant, M.D., an addiction expert and member of the Addict Evaluation Panel for the California Department of Corrections.

We spoke with Dr. Tennant at great length about this proposal and how it could affect inmates, staff, and the general public in the context of the safe operation of a detention facility.

Dr. Tennant, who has been treating nicotine addiction for approximately 20 years, said that withdrawal from nicotine and conatine is considered mild to moderate when compared to withdrawal from most of the illegal street drugs being used today.

Dr. Tennant envisioned very few problems within the detention setting with inmates withdrawing "cold turkey" from nicotine. Dr. Tennant said that, in his opinion, a

no-smoking policy was long overdue and that any adverse effects would be minimal compared to the positive benefits that would be derived.

Staff also contacted local medical professionals on this subject. Dr. Augustine Munoz of the Kern Medical Center pulmonary unit stated that no special treatment or diet would be required, from a medical standpoint, for an individual who was giving up smoking. Dr. Munoz recommended that an alternative, such as hard candy, be provided when cigarettes are taken away. He recommended against any type of nicotine gum or medication, due to the difficulty of monitoring use of these drugs and the potential harm they could cause if used incorrectly.

Dr. Munoz also suggested that the jail make available educational material and professional counseling for inmates who wanted help in giving up smoking, adding that the national heart, lung, or cancer associations might provide help in this area. Although the American Cancer Society and other groups offered to assist, logistical problems and lack of interest resulted in their services not being used.

No-Smoking Policies in Other Jurisdictions

In assessing the effects of a no-smoking policy, Kern County officials tried to identify other agencies that had adopted such a

policy. They found that the issue was on many people's minds, but all seemed to be waiting for someone else to take the first step.

Several smaller jails, primarily in Utah, had developed no-smoking policies. However, given the size of the jails and the existing cultural bias in Utah against the use of tobacco, their experience did not seem to provide the information Kern County needed to go forward.

Finally, however, staff did discover a comparable jail facility that had adopted a ban on smoking. King County, Washington, has a jail facility housing a population of about 1,600 inmates. The main jail was already open and established when the county implemented its no-smoking policy in April 1988.

Officials in King County say that they began weaning inmates from cigarettes approximately six months before the cut-off date by gradually reducing the number of cigarettes inmates could buy each week. One month prior to the target date, cigarette sales were completely eliminated.

At the time our inquiry was made, the King County policy had been in effect for about four months, and no problems had been reported.

During the implementation phase in King County, smoking substitutes were sold in the commissary. Officials reported, however, that the

inmates didn't use them. The county also set up a program in which medical and health department staff would speak to groups or individuals who wanted assistance in their withdrawal from nicotine. Again, the inmates didn't utilize this service. King County reported that these programs went by the wayside within a week.

Implementation Plan

With the information provided by staff working on the no-smoking proposal, Kern County jail managers felt confident in developing an implementation plan. Initial discussions centered around using one of the four Kern County jail facilities as a test center prior to implementing the policy system-wide. This concept was abandoned when it was resolved that if the plan were to work, it would have to be applied in a structured manner throughout the jail system.

The one facility that was excluded from the no-smoking policy was the minimum security facility. This decision was

based on the fact that the conditions that precipitated the policy in the secure facility did not exist in the minimum security environment. While smoking was prohibited

within the minimum security housing areas—a barracks setting—inmates had nearly unlimited freedom to go outside to smoke. From time to time rules might be broken, but non-smokers had an alternative to being exposed to secondary smoke.

Additionally, because of inmates' easy access to contraband items at the minimum security facility, enforcement of a smoking ban would be far too difficult and would involve too much staff time. Finally, allowing smoking at the minimum security facility would lessen the negative effect of the smoking ban on revenues generated by the inmate commissary, because nearly half of all inmates are housed at the minimum security facility.

Another factor considered in implementing the policy was its potential effect on employees. In order for the policy to be effective, it would be necessary to apply the

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same rules to security and civilian staff working in our jail facilities as to inmates. After conferring with both the deputy and general service employee unions on the proposed policy, we found there was little

opposition to the plan, with the condition that employees would be provided a designated area in which to smoke during scheduled breaks.

In fact, very few of those working in the jail are smokers. Those who do smoke have been understanding and have complied with a positive attitude.

Having received the green light from the Sheriff's Administration, staff completed their planning of the final implementation and established a timetable. The phase-out of cigarettes and establishment of the policy would take six weeks. (See insert.)

Upon the development of the no-smoking policy, a news release publicizing the plan was provided to the media. Response to this story was swift and excited. Reporters kept track of the progress of implementation on a week-to-week basis. Coverage subsided only when everyone was convinced that the Kern County Sheriff's Department no-smoking plan was the major non-event of the year.

Since the no-smoking policy's implementation, there have been no major or serious incidents related to it in any of the jails. A few minor problems were detected that involved attempted smuggling by minimum security inmates while

en route to court appearances. Violators were sent to a non-smoking facility for a period of up to fifteen days. Although smuggling will always occur, reported incidents have greatly diminished. The number of violations involving smoking in the minimum security barracks also has dropped dramatically.

Conclusion

Kern County officials have reached the point in their experiment that they can say that banning cigarette smoking in the jails has been an unqualified success. Where once staff were suspicious about the possible consequences of such an action, expressions of concern have now been replaced by positive comments about the plan. The cleanliness of the jail facilities has significantly improved, and safety and security issues are also anticipated to improve.

Although a no-smoking policy may not work in other localities or circumstances, in the case of Kern County jails, the policy is working well. A special acknowledgement is due Lt. Claudia Schweitzer, who had the vision and persistence to see this experiment through to its successful completion.

For more information, contact Lieutenant Jim Sida, Kern County Sheriff's Department, at (805) 861-7500. ■

Kern County's no-smoking plan was implemented through the following steps:

- **January 15, 1989** – Inmates and staff were notified in a letter from the Detention Bureau Chief of the policy to phase out smoking.
- **January 22** – Secure facilities reduced the quantity of cigarettes that inmates could purchase from ten packs to seven.
- **January 29** – Facilities reduced the permitted purchase quantity from seven packs to five.
- **February 5** – Purchase quantity was reduced from five packs to three.
- **February 12** – All sales of cigarettes were eliminated in secure facilities. A two-week grace period was allowed to give inmates the opportunity to use up existing supplies.
- **February 26** – Cigarettes were considered contraband in secure facilities, transportation buses, and court holding facilities.